

REMARKS

With the foregoing amendments, claims 9-25, 40, 49-50, 52-53, 56-58 and 61-66 are presented for favorable consideration.

Claim 51 has been cancelled and the subject matter of this claim has been submitted by way of new claims 61-64. Support is found in the specification, e.g., original claim 51 and page 18. New claims 65-66 have been added, as supported by the specification, e.g., page 4 and original claims 2-4. No new matter has been added by the claim amendments.

At the outset, applicants note with appreciation the Examiner's statement on page 4 of the Office Action that claims 9-25, 52-53 and 56-59 contain allowable subject matter.

Turning to the rejections, claims 36-38, 40, 49-50, 54-55 and 60 stand rejected under 35 USC 102(e) as allegedly being anticipated by Gainer 6,060,511 (the '511 patent). Applicants believe the rejection may have meant to refer to Section 102(b) because of the '511 patent's date of issuance, and, therefore, applicants address the rejection under this portion of the statute for the Examiner's convenience. In any event, applicants respectfully request the withdrawal of the rejection for at least the following reasons.

The Examiner states that "While US '511 may not teach the specific purity of the instant invention, the term "substantially" embraces or encompasses the purity level of the instant compounds." Applicants respectfully disagree and note the following differences between the claimed invention and the disclosures of US '511. For ease of understanding, the claims are addressed slightly out of numerical order.

Claims 36-38, 54-55 and 60 have been cancelled without prejudice, and thus the remaining pending claims in this rejection are 40 and 49-50.

Claim 40 requires the use of inhalation. There is no mention in US '511 of administration *by inhalation*. Thus, this claim is not anticipated.

Claims 49-50 exclude TSC and thus are clearly not anticipated by US '511, which concerns TSC.

Claim 60 stands rejected under 35 USC 112, first paragraph. This claim has been cancelled without prejudice.

Claim 51 stands rejected under 35 USC 112, first paragraph. Reconsideration is requested.

The Examiner notes that “the specification, while being enabling for performance enhancement wherein aerobic metabolism and endurance, does not reasonably provide enablement for enhancement of all kinds.” Claim 51 has been cancelled and replaced by new claims 61 and 62, which are supported by the specification (e.g., page 18, lines 8-10), and specify:

61. A method of increasing endurance in a mammal during physical activity comprising administering to said mammal a therapeutically effective

62. A method of increasing oxygen consumption in a mammal during physical activity comprising administering to said mammal a therapeutically effective

Thus, applicants submit that these claims comply with Section 112.

GAINER et al
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In view of the foregoing amendments and remarks, applicants submit that this application is in condition for allowance. A notice to that effect is earnestly solicited.

If the Examiner has any questions concerning this case, the undersigned may be contacted at 703-816-4009.

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

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